

Assembly Bill No. 435

CHAPTER 766

An act to add Section 56.31 to the Civil Code, and to amend Section 3762 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 7, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 435, Corbett. Workers' compensation: medical records: disclosure.

(1) Existing law provides that medical information and records that are obtained as a result of a claim for workers' compensation are exempt from the Confidentiality of Medical Information Act.

This bill would provide that the exemption is not available with respect to the disclosure or use of medical information regarding the human immunodeficiency virus (HIV) without a patient's prior authorization unless the patient is an injured worker claiming to be infected with or exposed to the virus through an exposure incident arising out of and in the course of employment. The bill would express legislative intent relating to the above changes that would be made by the bill.

(2) Existing law requires an insurer to discuss all elements of the claim file in a workers' compensation claim that affect the employer's premium, except as specified.

This bill would prohibit, with certain exceptions, the disclosure to an employer of medical information about an employee who has filed a workers' compensation claim.

(3) Existing law makes a violation of the Confidentiality of Medical Information Act which results in economic loss or personal injury to a patient a crime.

This bill, by including medical records and information subject to the Confidentiality of Medical Information Act that previously were excluded, would broaden the scope of that crime, thus would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 56.31 is added to the Civil Code, to read:

56.31. Notwithstanding any other provision of law, nothing in subdivision (f) of Section 56.30 shall permit the disclosure or use of medical information regarding whether a patient is infected with or exposed to the human immunodeficiency virus without the prior authorization from the patient unless the patient is an injured worker claiming to be infected with or exposed to the human immunodeficiency virus through an exposure incident arising out of and in the course of employment.

SEC. 2. Section 3762 of the Labor Code is amended to read:

3762. (a) Except as provided in subdivisions (b) and (c), the insurer shall discuss all elements of the claim file that affect the employer's premium with the employer, and shall supply copies of the documents that affect the premium at the employer's expense during reasonable business hours.

(b) The right provided by this section shall not extend to any document that the insurer is prohibited from disclosing to the employer under the attorney-client privilege, any other applicable privilege, or statutory prohibition upon disclosure, or under Section 1877.4 of the Insurance Code.

(c) An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in subdivision (b) of Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows:

(1) If the diagnosis of the injury for which workers' compensation is claimed would affect the employer's premium, then an insurer may disclose that diagnosis pursuant to subdivision (a).

(2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

SEC. 3. The addition of Section 56.31 to the Civil Code by this act is not intended either to abrogate the holdings in *Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, or to prohibit a redaction decision by a workers' compensation judge from being appealed to the Workers' Compensation Appeals Board.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime

or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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